

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

RICHARD JOHN KALTENBERG AND
MARY BETH KALTENBERG,

and

ZIEGLER DAIRY FARMS, INC.

Plaintiffs,

CASE NO. 22-CV-453

v.

COUNTY OF DANE,

Defendant.

DANE COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES

Dane County, by its attorneys, MUNICIPAL LAW & LITIGATION GROUP, S.C., hereby submits the following Answer and Affirmative Defenses to Plaintiffs' Complaint.

PARTIES

1. **Answering ¶ 1**, admit Richard John Kaltenberg and Mary Beth Kaltenberg are plaintiffs in the above captioned case. As further answer, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

2. **Answering ¶ 2**, admit Ziegler Dairy Farms, Inc. is a plaintiff in the above captioned case. As further answer, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

3. **Answering ¶ 3**, admit Dane County is a municipal entity organized and existing pursuant to Wisconsin law and located at 210 Martin Luther King Jr. Boulevard, Madison, WI 53703.

THE KALTENBERG LANDS

4. **Answering ¶ 4**, repeat, reallege, and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the rest of this responsive pleading.

5. **Answering ¶ 5**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

6. **Answering ¶ 6**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

7. **Answering ¶ 7**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon. As further answer,

8. **Answering ¶ 8**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

9. **Answering ¶ 9**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

10. **Answering ¶ 10**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

11. **Answering ¶ 11**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

THE ZIEGLER LANDS

12. **Answering ¶ 12**, repeat, reallege, and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the rest of this responsive pleading.

13. **Answering ¶ 13**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

14. **Answering ¶ 14**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

15. **Answering ¶ 15**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

16. **Answering ¶ 16**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

17. **Answering ¶ 17**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

18. **Answering ¶ 18**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

DANE LANDS

19. **Answering ¶ 19**, repeat, reallege, and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the rest of this responsive pleading.

20. **Answering ¶ 20**, deny Plaintiffs' description is either complete or correct

JURISDICTION

21. **Answering ¶ 21**, repeat, reallege, and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the rest of this responsive pleading.

22. **Answering ¶ 22**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

23. **Answering ¶ 23**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon. As further answer, deny Plaintiffs' description is either complete or correct and affirmatively allege that this Answering Defendant did not act improperly or in violation of Plaintiffs' constitutional, civil, and/or statutory rights as alleged or otherwise.

24. **Answering ¶ 24**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

25. **Answering ¶ 25**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

26. **Answering ¶ 26**, admit Plaintiffs sent a Notice of Claim to Dane County on January 18, 2022, but affirmatively allege there may not be compliance with the 893.80's presuit filing requirements.

27. **Answering ¶ 27**, admit Dane County sent Plaintiffs a Notice of Disallowance on February 10, 2022, but affirmatively allege there may not be compliance with the 893.80's presuit filing requirements.

28. **Answering ¶ 28**, admit, but affirmatively allege there may not be compliance with the 893.80's presuit filing requirements.

29. **Answering ¶ 29**, admit.

**FIRST CAUSE OF ACTION
CONTINUING PRIVATE NUISANCE**

30. **Answering ¶ 30**, repeat, reallege, and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the rest of this responsive pleading.

31. **Answering ¶ 31**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

32. **Answering ¶ 32**, deny Plaintiffs' description is either complete or correct.

33. **Answering ¶ 33**, deny Plaintiffs' description is either complete or correct.

34. **Answering ¶ 34**, deny Plaintiffs' description is either complete or correct.

35. **Answering ¶ 35**, deny Plaintiffs' description is either complete or correct.

36. **Answering ¶ 36**, deny Plaintiffs' description is either complete or correct.

37. **Answering ¶ 37**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

38. **Answering ¶ 38**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

39. **Answering ¶ 39**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

40. **Answering ¶ 40**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

41. **Answering ¶ 41**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

42. **Answering ¶ 42**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

43. **Answering ¶ 43**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

44. **Answering ¶ 44**, this paragraph states conclusions of law for which no answer is required, and to the extent any factual assertions are made, this Answering Defendant denies the same, putting Plaintiff specifically to her burden of proof thereon.

45. **Answering ¶ 45**, this paragraph states conclusions of law for which no answer is required, and to the extent any factual assertions are made, this Answering Defendant denies the same, putting Plaintiff specifically to her burden of proof thereon.

46. **Answering ¶ 46**, deny Plaintiffs' description is either complete or correct.

47. **Answering ¶ 47**, deny Plaintiffs' description is either complete or correct.

48. **Answering ¶ 48**, deny Plaintiffs' description is either complete or correct and affirmatively allege that this Answering Defendant did not act improperly or in violation of Plaintiffs' constitutional, civil, and/or statutory rights as alleged or otherwise.

49. **Answering ¶ 49**, deny Plaintiffs' description is either complete or correct and affirmatively allege that this Answering Defendant did not act improperly or in violation of Plaintiffs' constitutional, civil, and/or statutory rights as alleged or otherwise.

50. **Answering ¶ 50**, deny Plaintiffs' description is either complete or correct.

51. **Answering ¶ 51**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

52. **Answering ¶ 52**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

53. **Answering ¶ 53**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

54. **Answering ¶ 54**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

55. **Answering ¶ 55**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

56. **Answering ¶ 56**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

57. **Answering ¶ 57**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

58. **Answering ¶ 58**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

59. **Answering ¶ 59**, this paragraph states conclusions of law for which no answer is required, and to the extent any factual assertions are made, this Answering Defendant denies the same, putting Plaintiff specifically to her burden of proof thereon.

60. **Answering ¶ 60**, deny they are entitled to such relief.

**SECOND CAUSE OF ACTION
PETITION FOR INVERSE CONDEMNATION PROCEEDINGS ARISING OUT OF A
TEMPORARY TAKING**

61. **Answering ¶ 61**, repeat, reallege, and incorporate herein by reference all allegations, averments, denials and affirmative defenses contained within the rest of this responsive pleading.

62. **Answering ¶ 62**, deny Plaintiffs' description is either complete or correct.

63. **Answering ¶ 63**, deny Plaintiffs' description is either complete or correct.

64. **Answering ¶ 64**, deny Plaintiffs' description is either complete or correct.

65. **Answering ¶ 65**, deny Plaintiffs' description is either complete or correct.

66. **Answering ¶ 66**, deny Plaintiffs' description is either complete or correct.

67. **Answering ¶ 67**, deny Plaintiffs' description is either complete or correct.

68. **Answering ¶ 68**, deny Plaintiffs' description is either complete or correct.

69. **Answering ¶ 69**, deny Plaintiffs' description is either complete or correct and affirmatively allege that this Answering Defendant did not act improperly or in violation of Plaintiffs' constitutional, civil, and/or statutory rights as alleged or otherwise.

70. **Answering ¶ 70**, deny Plaintiffs' description is either complete or correct and affirmatively allege that this Answering Defendant did not act improperly or in violation of Plaintiffs' constitutional, civil, and/or statutory rights as alleged or otherwise.

71. **Answering ¶ 71**, deny Plaintiffs' description is either complete or correct and affirmatively allege that this Answering Defendant did not act improperly or in violation of Plaintiffs' constitutional, civil, and/or statutory rights as alleged or otherwise.

72. **Answering ¶ 72**, deny Plaintiffs' description is either complete or correct and affirmatively allege that this Answering Defendant did not act improperly or in violation of Plaintiffs' constitutional, civil, and/or statutory rights as alleged or otherwise.

73. **Answering ¶ 73**, deny they are entitled to such relief.

74. **Answering ¶ 74**, deny they are entitled to such relief.

75. **Answering ¶ 75**, deny they are entitled to such relief.

76. **Answering ¶ 76**, deny they are entitled to such relief.

77. **Answering ¶ 77 and all its subparts**, admit Dane County is located at 210 Martin Luther King Jr. Boulevard, Madison, WI 53703. As further answer, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

78. **Answering ¶ 78**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

79. **Answering ¶ 79**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

80. **Answering ¶ 80**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

81. **Answering ¶ 81**, lack knowledge and information sufficient to form a belief as to the allegations contained therein and therefore deny the same, putting Plaintiffs specifically to their proof thereon.

AFFIRMATIVE DEFENSES

Dane County hereby submits the following affirmative defenses to Plaintiffs' Complaint:

1. Plaintiffs' Complaint may contain claims which fail to state a claim upon which relief may be granted as against this Answering Defendant;
2. The injuries and damages sustained by Plaintiffs, if any, were caused in whole or in part by their own acts or omissions and/or their failure to mitigate;
3. The injuries and damages sustained by Plaintiffs, if any, were caused in whole or in part by the acts or omissions of persons other than Dane County, its agents, or employees;
4. Plaintiffs' state law claims are subject to the limitations, requirements, and immunities contained within Wis. Stat. § 893.80, including notice and monetary caps therein;
5. Plaintiffs' claims and allegations are subject to the doctrines of waiver, estoppel, and/or mootness;
6. Plaintiffs may have failed to exhaust available avenues or may have failed to ripen his claims, which may in turn deprive the court of competency and/or jurisdiction over their claims;
7. Plaintiffs' claims may be barred by the applicable statutes of limitations;
8. Plaintiffs may be prevented from a right of recovery against this answering Defendant because an intervening or superseding cause resulted in the damages claimed, because the alleged damages were not proximately caused by this Defendant or because an Act of God resulted in the damages claimed;
9. Plaintiffs may have failed to join all necessary parties; and
10. Defendant reserves all affirmative defenses which may be waived under Wis. Stat. § 802.06(2)(a) if not pled or which may arise during the course of discovery.

WHEREFORE, Dane County respectfully demand judgment as follows:

1. For dismissal of Plaintiffs' Complaint, on the merits and with prejudice;
2. For costs and disbursements of this action; and

3. For such other and further relief as this Court may deem just and equitable.

DEFENDANT REQUESTS TRIAL BY JURY

Dated this 8th day of April, 2022.

MUNICIPAL LAW & LITIGATION GROUP, S.C.
Attorneys for Dane County.

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